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Paper No.

FOLEY AND LARDNER LLP  
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 WASHINGTON DC 20007

**MAILED**  
**APR 28 2010**  
**OFFICE OF PETITIONS**

In re Patent No. 7,608,343 : DECISION ON REQUEST  
 Frans Nooren : FOR  
 Issue Date: October 27, 2009 : RECONSIDERATION OF  
 Application No. 10/564,516 : PATENT TERM ADJUSTMENT  
 Filed: January 13, 2006 : and  
 Atty Docket No. : NOTICE OF INTENT TO ISSUE  
 069818-2900 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on December 3, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by seven hundred eleven days (711) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixty-nine (569) days is **GRANTED to the extent indicated herein.**

As to the "B" delay, a request for continued examination was filed on July 14, 2009. The period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period. Therefore, the over three year period begins on January 14, 2009, the day after the date three years after the application commenced the national stage and ends on July 13, 2009, the day before the RCE was filed, and is 181 days, not 287 days. See 35 U.S.C. 154(b)(1)(B)(i).

Petitioner notes, in the timeline attached to the petition, an additional period of reduction for applicant delay of 17 days, from the mailing of the notice of allowance on July 3, 2009, to the mailing of a decision on the petition to withdraw from issue, mailed on July 20, 2009.

While petitioner is correct that an additional period of reduction should be entered, the reduction calculated by petitioner is incorrect. In this regard, a review of the record confirms that an additional period of reduction should be entered for applicant's failure to engage pursuant to 37 CFR 1.704(c)(10), which states:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping: Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of: (i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (ii) Four months.

On April 3, 2009, a Notice of Allowance was mailed. On July 14, 2009, applicants filed an RCE and an information disclosure statement (IDS). The IDS submitted on July 14, 2009, did not contain the statement set forth in 37 CFR 1.704(d). Prior to filing the RCE, applicants paid the issue fee. This set the calculation of the period of reduction pursuant to 37 CFR 1.704(b), if any, for applicant delay. The filing of the RCE and IDS on July 14, 2009, after the mailing of the Notice of Allowance constituted a failure to engage pursuant to 37 CFR 1.704(c)(10). This period is 53 days, counting the number of days beginning on July 14, 2009, the date the RCE and IDS were filed, and ending on September 4, 2009, the date of mailing of the new Notice of Allowance in response.

Accordingly, a period of reduction of 53 days pursuant to 37 CFR 1.704(c)(10) will be entered.

The patent term adjustment is revised to 569 days (454 days Office delay + 181 days over three year delay - 66 (13 + 53) days of applicant delay).

Patent No. 7,608,343

Application No. 10/564,516

Page 3

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred sixty-nine (569) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,608,343 B2

DATED : October 27, 2009

DRAFT

INVENTOR(S) : Nooren et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 441 days.

Delete the phrase "by 441 days" and insert -- by 569 days--